57328-4

57328-4

81003-6

NO. 57328-4-I

COURT OF APPEALS STATE OF WASHINGTON
DIVISION I

CAMBRIDGE TOWNHOMES, LLC, a Washington limited liability company; POLYGON NORTHWEST COMPANY, a Washington general partnership,

Appellants.

v.

PACIFIC STAR ROOFING, INC., a Washington corporation; P.J. INTERPRIZE, INC., a Washington corporation,

Respondents.

BRIEF OF RESPONDENT PACIFIC STAR ROOFING, INC.

Gregory P. Turner, WSBA No. 20085
Attorney for Respondent
Pacific Star Roofing, Inc.

LEE, SMART, COOK, MARTIN
& PATTERSON, P.S., INC.
1800 One Convention Place
701 Pike Street
Seattle, WA 98101-3929
(206) 624-7990

ORIGINAL

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Table of Cases

Page(s)

Statutes

A. ASSIGNMENTS OF ERROR

Assignments of Error

Respondent, Pacific Star Roofing, Inc. (Pacific Star) assigns no error to the trial court's decisions.

Issues Pertaining to Assignments of Error

Pacific Star disagrees with the issues asserted by Polygon as they relate to Pacific Star and believe they are more correctly stated as follows:

1. Did the trial court properly dismiss Polygon's indemnity claim after Polygon failed to present any evidence that its indemnity claim existed or accrued prior to the dissolution of Pacific Star?

2. Did the trial court properly dismiss Polygon's breach-of-contract claim after Polygon failed to present any evidence that its contract claim existed or accrued prior to the dissolution of Pacific Star?

3. Did the trial court properly award attorney's fees pursuant to the indemnity provision of the subcontract after Pacific Star had prevailed on the indemnity claim?

B. STATEMENT OF THE CASE

1. Polygon never tendered the defense of this claim to Pacific Star.

Pacific Star does not dispute that it installed the roofs at Cambridge under a written contract with Polygon Northwest Company.

CP 544-49. Pacific Star completed its work and was paid in full in 2000. CP 4. Pacific Star's first notice of any potential problem was in August 2003, when it received a letter from Polygon. CP 2083-84. Contrary to Polygon's current assertion, Polygon's defense was never tendered to Pacific Star. *Id.* Polygon argues, for the first time on appeal, that Pacific Star breached its obligation to defend Polygon in early 2003. Appellant's Brief at 29. It cites no authority for this factual assertion, because none exists. Polygon did not allege a cause of action in its complaint for breach of duty to defend. CP 14-15. This is because the defense was not tendered to nor rejected by any subcontractor.

Pacific Star does not dispute that it received a letter dated August 11, 2003 identical to the one directed to P.J.'s. CP 2083-84. The letter proves that the claim and defense were not tendered to the subcontractors. The letter states:

> We hope that you will participate in a group meeting scheduled on Monday, September 8, 2003 at 1:00 p.m. at Polygon's offices to discuss Polygon's plan to resolve the COA's claims.
>
> . . .
>
> If you are interested in participating in this non-litigation claim resolution from the beginning, we ask that you attend a meeting scheduled for Monday, September 8 where Polygon representatives will discuss the agreement with the COA, and how we propose to bring this matter to a non litigated resolution.

. . .

> In a separate letter, we are tendering the defense of Polygon to your insurance carriers based on Polygon's status as an additional insured under your policy. We will seek their participation in this process from the outset, as well.

Id.. Pacific Star attended the meeting as Polygon had requested and agreed to participate in the process. Polygon made no further request of Pacific Star before settling with the Cambridge Owners Association (COA).[1] Polygon never asked Pacific Star to provide a defense.

2. Polygon sought only reimbursement for a settlement it reached after the dissolution of Pacific Star.

On October 17, 2003, Pacific Star dissolved as a corporation. CP 1783. On or about November 21, 2003, Polygon reached a settlement with the COA. CP 2527. Polygon never requested payment for, nor even alleged, any damages other than the amount paid in settlement to the COA pursuant to the agreement reached in November 2003. CP 6. Accordingly, the only damages Polygon identified were the sums the various insurance carriers paid to the COA as a result of the settlement

[1] Polygon tendered to the insurance carriers as an additional insured under endorsements purchased by the subcontractors, including Pacific Star. Polygon never raised this issue in the trial court and therefore no citation to the record is available. The claims against Pacific Star's carriers are set forth in King County cause # 05-2-23033-9. The carriers have resolved the claims of Polygon and presumably paid all damages and fees arising out of Pacific Star's work.

reached more than a month after Pacific Star Roofing was legally dissolved.

Polygon filed suit against Pacific Star on or about March 24, 2004. CP 1-16. On or about May 16, 2005, the trial court dismissed Polygon's indemnity claims against Pacific Star finding that the indemnity claims accrued on or after November 21, 2003 when Polygon paid or was legally obligated to pay money to the COA. CP 745-48. The court took under advisement Pacific Star's request to dismiss the breach of contract claims because Polygon raised at oral argument the possibility that it had suffered damage prior to the dissolution of Polygon and accordingly might be able to establish a breach of contract claim that existed prior to the dissolution of Pacific Star. CP 1343-46.

In October 2005, Pacific Star renewed its request that the trial court dismiss Polygon's breach-of-contract claims because Polygon still had not produced any evidence that it had suffered any damage prior to the dissolution of Pacific Star for which it could assert a pre-dissolution contract claim. *Id.* The trial court granted summary judgment dismissing the breach of contract claims because Polygon never produced any evidence of damages other than the monies paid by its insurance carriers pursuant to the settlement reached with the COA on November 21, 2003. CP 2022-23.

C. SUMMARY OF ARGUMENT

Polygon never tendered its defense to Pacific Star. When Polygon first contacted Pacific Star regarding this claim it had already entered into a non-litigation resolution protocol with the COA. Pacific Star agreed to participate in the protocol, and was never contacted again until after Polygon had settled the COA claims. Polygon never alleged a cause of action for breach of the duty to defend and never raised the issue in the trial court.

Polygon's claims accrued after the dissolution of Pacific Star and are barred. Polygon's indemnity claim accrued and therefore came into existence when it settled the COA claims, demanded indemnity, and was rejected by the Subcontractors. All of which occurred after the dissolution of Pacific Star. Accordingly, Polygon had no indemnity claim existing at the time of Pacific Star's dissolution.

Polygon's claim for breach of the construction contract terms failed because no evidence was presented of pre-dissolution breach, causation, and damages. Pacific Star originally moved for summary judgment in May 2005 arguing that all of Polygon's claims accrued after November 2003 because Polygon only sought to recover the damages it incurred in the form of settlement payments to the COA. The trial court reserved ruling allowing Polygon until October 2005 to present evidence

of pre-dissolution damages proximately caused by Pacific Star's alleged breach of contract. Polygon failed to present any evidence to support its allegation of a pre-dissolution claim and the trial court properly dismissed its remaining claims.

The Legislature's 2006 amendments to RCW 23B have no relevance to this proceeding and no impact on this court's decision in *Ballard Square Condo Owner's Assoc. v. Dynasty Constr. Co.*, 126 Wn. App. 285, 108 P.3d 818, *rev. granted*, 155 Wn.2d 1024, 126 P.3d 820 (2005). It is well settled that the legislature cannot overrule the Court of Appeals. Legislative enactments cannot be applied retroactively if they will contravene prior case law interpreting the statute. The Legislature's amendment of RCW 23B cannot overrule this court's decision in *Ballard Square* and cannot be applied in this case.

Pacific Star Roofing is entitled to its award of attorney fees. The indemnity provision of its contract provided for prevailing-party attorney fees for any claim of indemnity. Polygon's indemnity claim was properly dismissed, and Pacific Star is entitled to its attorney fees below and on appeal.

Polygon is not entitled to summary judgment. Polygon never moved the trial court for summary judgment and is not entitled to summary judgment on appeal. No record has been established and Pacific

Star has not been given the opportunity to rebut the merits of Polygon's claims for breach of contract and indemnity. For purposes of summary judgment, Pacific Star conceded breach and did not present evidence on the issue, because it was not relevant to its pending motion. There remain numerous questions of fact on breach, causation, and damages. There is no evidence that any settlement money is actually funding repairs or work that was part of Pacific Star's scope of work. Further, there is no evidence that Polygon paid any of the settlement money or whether the insurers that paid have any subrogation rights when under the insurance that Pacific Star purchased.

D. ARGUMENT

1. Polygon's claims accrued after the dissolution of Pacific Star and are barred.

Recently this court addressed what claims may be brought against a dissolved corporation. *Ballard Square.*, 126 Wn. App. at 285. In *Ballard Square*, the homeowners brought claims against the general contractor years after it had been dissolved. This court addressed the central issue of which claims survived dissolution of the corporation. After a thorough analysis, this court noted that at common law, a corporation ceased to exist upon dissolution and all claims against that corporation were terminated by operation of law. Responding to the

inequity of such a result, state legislatures across the country adopted various statutes. Our legislature adopted RCW 23B.14.340 which provides that a corporation's dissolution "shall not take away or impair any remedy available against such corporation . . . for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution." Interpreting this language, this court recognized that the legislature only adopted the portion of the uniform act, which allowed for claims arising prior to dissolution to be brought within two years after dissolution. The court found that the legislature failed to adopt a provision which would allow the survival of a post-dissolution claim.

> The legislature's decision not to adopt section 1407 indicates its intent to retain a common law rule in the context of post-dissolution claims. Thus we turn to common law to resolve the issue. And as we stated above, the common law rule is that claims against corporations terminate upon the corporation's dissolution.

Id at 295. In *Ballard Square,* this court held that RCW 23B.14.340 did not encompass post-dissolution claims based on pre-dissolution contract rights:

> We previously reached a similar conclusion in *Smith v. Sea Ventures, Inc.*, where we held that RCW 23B.14.340 does not govern post-dissolution claims based on pre-dissolution contractual rights.

Id. at 293.

This court held that Washington's dissolution statute did not apply to claims that were not ripe before dissolution of the corporation.

> In reversing the trial court, this court noted that Washington's statute was based upon section 14.06 of the Model Business Corporations Act (Model Act). According to the Model Act's official comments, section 14.06 was "not intended to cover claims which are contingent or arise based on events occurring after the effective date of dissolution." That role was reserved for section 14.07. We held that the fact the Legislature adopted section 14.06 but not section 14.07 suggested its intent to place a time restriction only on claims existing before the corporation's dissolution. Therefore, in Smith, because the plaintiff's identity and the nature of his potential claim were known before the dissolution by virtue of the 1990 contract, but any potential claim was not ripe by the time the corporation dissolved, the survival statute did not apply to the case.

Id. at 293-94.

Here, Polygon asserted two claims in its complaint. CP 14-15. First, that the subcontractors had breached their contracts by not performing the work in accordance with the contract terms. Second, that the subcontractors breached their contractual duty to indemnify Polygon for its settlement with the COA. *Id.* On appeal, Polygon now raises a third claim, that the subcontractors breached their duty to defend Polygon. Applying this court's reasoning in *Ballard Square* to these three claims we see why the trial court granted summary judgment. As shown more fully below, the claims for defense and indemnity did not exist when Pacific

Star dissolved because it could not have breached these contractual duties when:

1. They had not been tendered to nor rejected by Pacific Star.

2. Polygon had not been sued by the COA; and

3. Polygon had not settled with the COA.

The claim for breach of the construction terms was dismissed because Polygon failed to prove that, prior to Pacific Star's dissolution, Polygon could establish a prima facie case of breach, causation, and damages.

2. Polygon's indemnity claim accrued and therefore came into existence when it settled the COA claims, demanded indemnity, and was rejected by the Subcontractors.

An indemnitor's liability to the indemnitee accrues when under the terms and conditions of the contract, the covenant of indemnity is broken. *Parkridge Assn. v. Ledcor Ind.*, 113 Wn. App. 592, 54 P.3d 225 (2002). In *Parkridge*, this court evaluated language almost identical to that at issue in this case. *Id.* at 596. The general contractor had entered into a subcontract which required the subcontractor to defend, indemnify and hold the general contractor harmless from "any and all claims, demands, losses and liabilities." *Id.* The subcontractor moved to dismiss arguing that the indemnity claim accrued after the statute of repose had expired. The trial court dismissed and this court affirmed finding that the indemnity claim accrued on the date of settlement. *Id.* at 605. This court recognized

that prior to settlement there was nothing but mere allegations and the potential but not actual liability. *Id.* This was true even though the general contractor had been sued prior to the running of the statute of repose.

> Here, the indemnity agreement stated that Freeman agreed to indemnify and hold Ledcor harmless from "losses and liabilities." Such "losses and liabilities," the terms relevant to the duty under this indemnity agreement, were not established as of December 5, 2000, the bar date under the statute of repose. As of that date, mere allegations established potential, not actual, liability. Thus, there was no breach of any duty to indemnify under the subcontract's addendum as of that date.

Id. at 605.

Under the analysis set forth in *Parkridge*, the earliest that Polygon's indemnification claims accrued was the date that it reached the settlement with the COA. More specifically, the claim existed only after indemnity was demanded and the subcontractors broke their contractual obligations by refusing to indemnify.

3. Polygon's claim for breach of the construction contract terms failed because no evidence was presented of pre-dissolution breach, causation, and damages.

Polygon presented no evidence of a claim that was ripe before Pacific Star's dissolution. Pacific Star does not assert nor does it know whether Polygon had a viable pre-dissolution claim. Whether Polygon

possesses evidence of breach, causation and damage occurring prior to October 17, 2003 is solely in the control a Polygon. The trial court granted summary judgment because after months of delay Polygon failed to provide any evidence of a pre-dissolution claim. Instead, Polygon argued only that it was entitled to reimbursement for amounts paid to the COA. Polygon argued that it was entitled to reimbursement under theories of indemnity and breach of contract. However, Polygon's continued reliance on the payment to the COA as its only damage dictated when its claim accrued, or to use this court's term, when its claim ripened. Polygon's claim for reimbursement ripened when it settled with the COA regardless of its theory of recovery.

Polygon had no claim for breach of contract prior to the dissolution of Pacific Star Roofing. A breach of contract is actionable if the contract imposes a duty, the duty is breached, and the breach is a proximate cause of damage to the claimant. *N.W. Independent Forest Mfrs. v. Dept. of Labor & Ind.*, 78 Wn. App 707, 712, 899 P.2d 6 (1995). In an action for damages only, failure to prove damages warrants dismissal. *Ketchum v. Albertson Bulb Gardens*, 142 Wn. 134, 139, 252 P.523 (1927). The mere proof of a contract breach, without more, does not warrant a verdict and requires dismissal. *Id.* Polygon did not present any evidence that it suffered any damage other than payments in settlement. Accordingly,

Polygon failed to prove an action for breach of contract that existed prior to dissolution of Pacific Star Roofing.

Polygon, attempts to distinguish this case by asserting that its claim against Pacific Star "arose" prior to Pacific Star's October 2003 dissolution. The plain language of RCW 23B.14.340 contradicts Polygon's analysis. That statute applies only to "remed[ies] . . . for any right or claim **existing**, or **liability incurred**, prior to such dissolution." RCW 23B.14.340 (emphasis added). Well-settled principles of statutory construction command that courts will give effect to unambiguous language "because [courts] presume the legislature says what it means and means what it says." *State v. Costich*, 152 Wn.2d 463, 98 P.3d 795 (2004). Regardless of what Polygon asserts, courts may not add language to clearly written statutes. *Spence v. Kaminiski*, 103 Wn. App. 325, 333, 12 P.3d 1030 (2000).

Nowhere does RCW 23B.14.340 reference when a claim "arises." Even if it did, the Washington Supreme Court long ago interpreted the term "accrue" to encompass the term "arising." *Bennett v. Thorne*, 36 Wash. 253, 267, 78 P. 936 (1904). More fundamentally, though, the dispositive inquiry is whether any of Polygon's claims against Pacific Star "exist[ed]" or whether Polygon had "incurred" liability prior to October 2003. RCW 23B.14.340. Washington courts

have consistently equated the terms "exist" and "accrue." *See, e.g., Caughell v. Group Health Coop.*, 124 Wn.2d 217, 225, 876 P.2d 898 (1994); *In re Estate of Hitchman*, 100 Wn.2d 464, 466-69, 670 P.2d 655 (1983) (State's "accrued" right to collect inheritance tax was an "existing right" for purposes of tax initiative modifying inheritance tax to estate tax).

A cause of action accrues at the moment when a suit may be maintained against the wrongdoer, at the time damage is sustained or when the injured party is entitled to sue. *Hudesman v. Meriwether Leachman Associates, Inc.*, 35 Wn. App. 318, 322, 666 P.2d 937 (1983). In *Hudesman*, the court noted that in most circumstances, a cause of action accrues when its holder has the right to apply to the court for relief and until a plaintiff suffers appreciable harm, he cannot establish a cause of action. Although he may have nominal damages, the cause of action is triggered by the infliction of actual and appreciable damage. *Id* (citing *Gazija v. Nicholas Jerns Co.*, 86 Wn.2d 215, 222, 543 P.2d 338 (1975)).

The same analysis was applied to the construction statute of repose in the case of *Lakeview Blvd. Condo. Assn. v. Apt. Sales Corp.*, 101 Wn. App. 923, 6 P.3d 74 (2000). In *Lakeview*, condominiums were defectively designed and constructed between 1988 and 1990. During a severe storm in 1997, the condominiums began to slide down the hillside and were

ultimately condemned resulting in a total loss to the homeowners. The homeowners sued the developer, contractor, architect and geotechnical engineers. The court ruled that the claims were barred by the six-year statute of repose. *Id.* at 944. The breaches in *Lakeview,* may have occurred between 1988 and 1990, the homeowners suffered no appreciable damage until 1997. Thus their claims did not accrue within the six-year statute of repose.

The same is true here. Regardless of the theory asserted, Polygon suffered no appreciable damage until it was sued and paid the settlement. Polygon's breach-of-contract claims must be dismissed.

4. The Legislature's 2006 amendments to RCW 23B have no relevance to this proceeding and no impact on this court's decision in *Ballard Square.*

This court analyzed the provisions of RCW 23B *et seq.* and determined that claims which accrued after the dissolution of a corporation are barred under Washington law. *Ballard Square.*, 126 Wn. App. at 285. The alleged subsequent amendments to RCW 23B *et. seq.* cannot be viewed retroactively and have no impact on this court's prior interpretation of RCW 23B *et. seq. Barstad v. Stewart Title Guarantee Co.*, 145 Wn.2d 528, 537, 39 P.3rd 984 (2002).

> An amendment is curative and remedial if it clarifies or technically corrects an ambiguous statute **without changing prior case law constructions of the statute.** *In re Personal Restraint of Matteson*, 142 Wn.2d 298, 308, 12 P.3d 585 (2000). Thus, subsequent enactments that only clarify an earlier statute can be applied retroactively. . . . This court generally disfavors retroactive application of a statute.

Id. (emphasis added). Our courts have consistently ruled that when a legislative amendment clarifies an existing law, and where the amendment does not contravene previous constructions of the law, the amendment may be deemed curative, remedial, and retroactive. This is particularly so where an amendment is enacted during a controversy regarding the meaning of the law. But if the legislative amendment does in fact contravene prior case law, it would be improper to apply the legislative amendment retroactively. *Magula v. Benton Franklin Title Co.*, 131 Wn.2d 171, 182, 930 P.2d 307 (1998). Any attempt by the legislature to contravene retroactively the court's construction of a statute raises separation of power problems and effectively would give the legislature the ability to overrule the judiciary. *Id.*, *see also Johnson v. Morris*, 87 Wn.2d 922, 926, 557 P.2d 1299 (1976). Accordingly, the legislature's June 2006 amendment of RCW 23B *et seq.* cannot be retroactively applied to this case.

5. Pacific Star Roofing is entitled to its award of attorney fees.

The trial court awarded Pacific Star its attorney fees pursuant to the indemnity clause of its subcontract. The indemnity clause provided that should any disputes arise with respect to the applicability and/or interpretation of the rights to indemnification, the prevailing party shall be entitled to recover its reasonable attorney fees and costs in addition to any other remedy. Here, Pacific Star Roofing was the prevailing party with regard to the claim for indemnity. The Court of Appeals has held that a party who successfully defends an action on a contract by arguing the contract is void is nevertheless entitled to fees pursuant to the contract. This line of cases begins with *Herzog Aluminum, Inc. v. General American Window Corp.*, 39 Wn. App. 188, 197, 692 P.2d 867 (1984). In *Herzog*, Division One of the Court of Appeals held that even though no contract had been formed, the prevailing party was entitled to fees and costs pursuant to RCW 4.84.330 which provides:

> In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he is the party specified in the contract or lease or not, shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

Accordingly, Pacific Star Roofing is entitled to its attorney fees in the trial court and on appeal.

6. Polygon is not entitled to summary judgment.

Polygon is not entitled to summary judgment regardless of how this court rules on the dismissal of claims against Pacific Star. Polygon did not move below for summary judgment. Accordingly, no record has been developed on whether Pacific Star actually breached the terms of its construction contract. For purposes of its motion to dismiss, Pacific Star argued that even if it had breached its construction contract no claim survived dissolution. Before this court can pass on the issue of whether Pacific Star breached its contract the issue must be properly raised below. *Wingert v. Yellow Freight Sys.*, 146 Wn.2d 841, 853, 50 P.3d 256 (2002).

Additional factual issues also preclude a finding of summary judgment in favor of Polygon. There has been no factual determination of whether any settlement dollars were paid for claims arising out of the work of Pacific Star. Accordingly, questions of fact remain on whether Pacific Star owes any indemnification. Further, there is no evidence in the record to support that Polygon paid anything in settlement itself. Nothing in the contract requires Pacific Star to indemnify Polygon's insurers, which raises additional factual issues about the intent of the contracting parties. There remain significant questions weather an insurer has

subrogation rights in this contractual setting. And still more issues are raised by the fact that some if not all of the fees, costs, and alleged damages were paid by Pacific Star's own insurers under additional insured endorsements purchased by Pacific Star to cover its indemnity obligations to Polygon. For these reasons questions of fact remain which preclude summary judgment for Polygon.

E. CONCLUSION

Polygon never tendered its defense to Pacific Star. When Polygon first contacted Pacific Star regarding this claim it had already entered into a non-litigation resolution protocol with the COA. Pacific Star agreed to participate in the protocol, and was never contacted again until after Polygon had settled the COA claims. Polygon never alleged a cause of action for breach of the duty to defend and never raised the issue in the trial court.

Polygon's claims accrued after the dissolution of Pacific Star and are barred. Polygon's indemnity claim accrued and therefore came into existence when it settled the COA claims, demanded indemnity, and was rejected by the Subcontractors. All of which occurred after the dissolution of Pacific Star. Accordingly, Polygon had no indemnity claim existing at the time of Pacific Star's dissolution.

Polygon's claim for breach of the construction contract terms failed because no evidence was presented of pre-dissolution breach, causation, and damages. Polygon failed to present any evidence to support its allegation of a pre-dissolution claim and the trial court properly dismissed its remaining claims.

The Legislature's 2006 amendments to RCW 23B have no relevance to this proceeding and no impact on this court's decision in *Ballard Square.* It is well settled that the legislature cannot overrule the Court of Appeals. Legislative enactments cannot be applied retroactively if they will contravene prior case law interpreting the statute. The Legislature's amendment of RCW 23B cannot overrule this court's decision in *Ballard Square* and cannot be applied in this case.

Pacific Star Roofing is entitled to its award of attorney fees. The indemnity provision of its contract provided for prevailing-party attorney fees for any claim of indemnity. Polygon's indemnity claim was properly dismissed, and Pacific Star is entitled to its attorney fees below and on appeal.

Polygon is not entitled to summary judgment. Polygon never moved the trial court for summary judgment and is not entitled to summary judgment on appeal.

For the reasons set forth above the court should affirm the trial court's dismissal of all claims against Pacific Star and the court should award Pacific Star its attorney fees on appeal.

RESPECTFULLY SUBMITTED this 6 day of September, 2006.

LEE, SMART, COOK, MARTIN & PATTERSON, P.S., INC.

By: _____
Gregory P. Turner, WSBA No. 20085
Of Attorneys for Respondent
Pacific Star Roofing, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, certify under penalty of perjury and the laws of the State of Washington that on September 6, 2006 I caused service of BRIEF OF RESPONDENT PACIFIC STAR ROOFING, INC. via Legal Messenger to:

Clerk, Court of Appeals, Division I
One Union Square
600 University Street
Seattle, WA 98101-1176

and to:

Counsel for Cambridge Townhomes, LLC
Mr. Jerret E. Sale
Bullivant Houser Bailey, PC
1601 Fifth Avenue, Suite 2400
Seattle, WA 98101-1618

Counsel for Polygon Northwest Company
Mr. Jeffrey W. Daly
Preg O'Donnell & Gillett PLLC
1800 Ninth Avenue, Suite 1500
Seattle, WA 98101-1340

Counsel for P.J. Interprize, Inc.
Ms. Eileen I. McKillop
Oles Morrison Rinker & Baker
701 Pike Street, Suite 1700
Seattle, WA 98101-3930

Jennifer A. Riley